

907 KAR 3:215. Tobacco cessation coverage and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560(1)(j) authorizes the department to cover smoking cessation treatment interventions or programs. This administrative regulation establishes the department's coverage and reimbursement of tobacco cessation services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "FDA" means the United States Food and Drug Administration.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Legend drug" means a drug:

(a) Defined by the United States Food and Drug Administration as a legend drug; and

(b) Required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Medically necessary" means that a covered benefit is determined by the department to be needed in accordance with 907 KAR 3:130.

(7) "Physician" is defined by KRS 311.550(12).

(8) "Physician assistant" is defined by KRS 311.840(3).

(9) "Recipient" is defined by KRS 205.8451(9).

(10) "Supervising physician" is defined by KRS 311.840(4).

(11) "Tobacco cessation medication" means:

(a) Nicotine replacement therapy:

1. Gum;

2. Lozenge;

3. Patch;

4. Inhaler; or

5. Spray; or

(b) A legend drug approved by the United States Food and Drug Administration for tobacco cessation.

Section 2. Provider Requirements for a Tobacco Cessation Assessment. A tobacco cessation assessment provider shall be:

(1) A physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(2) A physician assistant working under the supervision of a supervising physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(3) An APRN who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

- (b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671; or
- (4) Any of the following employed by a local health department:
 - (a) A physician assistant working under the supervision of a supervising physician;
 - (b) A physician; or
 - (c) An APRN.

Section 3. Tobacco Cessation Assessment and Referral. (1) The department shall reimburse for a tobacco cessation assessment if:

- (a) The tobacco cessation assessment is provided:
 - 1. By a provider listed in Section 2 of this administrative regulation; and
 - 2. To a recipient; and
- (b) The department receives, from the provider, the completed Tobacco Cessation Referral Form corresponding to the assessment.
- (2) A tobacco cessation assessment shall:
 - (a) Be performed over a period of at least ten (10) minutes;
 - (b) Be performed face-to-face with the recipient;
 - (c) Include:
 - 1. Asking the recipient about tobacco use;
 - 2. Advising the recipient to quit using tobacco;
 - 3. Assessing the recipient's readiness to quit using tobacco;
 - 4. Compiling a tobacco usage, medical, and psychosocial history of the recipient;
 - 5. Incorporating a review of the recipient's coping skills and barriers to quitting; and
 - 6. The provider's obtaining of a signed and dated Tobacco Cessation Referral Form from the recipient declaring the recipient's intent to quit using tobacco; and
 - (d) Be conducted once per course of treatment.
- (3)(a) A provider shall complete a Tobacco Cessation Referral Form with the recipient in accordance with the instructions on the form.
- (b) A provider and recipient shall:
 - 1. Choose one (1) of the following tobacco cessation programs for the recipient:
 - a. The Cooper/Clayton Method;
 - b. Freedom from Smoking® Online;
 - c. Kentucky's Tobacco Quitline;
 - d. GetQUIT Plan;
 - e. <http://www.becomeanex.org>;
 - f. <http://mylastdip.com>;
 - g. <https://positivelysmokefree.org/cgi-bin/WebObjects/PSFs>; or
 - h. Another program designed to offer support for tobacco cessation;
 - 2. Determine that the recipient does not require a support program; or
 - 3. Determine that a hardship exists that prevents the recipient from accessing a tobacco cessation support program.
- (c) The provider shall denote on the Tobacco Cessation Referral Form the decision made by the provider and recipient pursuant to paragraph (b) of this subsection.
- (4) A provider shall:
 - (a) Submit a completed Tobacco Cessation Referral Form to the department in accordance with the instructions on the form; and
 - (b) Give a copy of the completed Tobacco Cessation Referral Form to the recipient; and
 - (c) Maintain, for at least six (6) years from the date a Tobacco Cessation Referral Form was completed, a:
 - 1. Paper copy of the Tobacco Cessation Referral Form; or

2. Readily accessible electronically formatted copy of the Tobacco Cessation Referral Form.
(5) The department shall reimburse for no more than two (2) tobacco cessation assessments per recipient per calendar year.

(6) If a recipient has a hardship which is not revealed or denoted during an assessment, the department may:

- (a) Determine that a hardship exists; and
- (b) Exempt the recipient from the requirement to participate in a tobacco cessation program.

Section 4. Tobacco Cessation Medication. (1) If a physician, APRN, or physician assistant working under a supervising physician as specified in Section 2 of this administrative regulation prescribes a medically necessary tobacco cessation medication for a recipient, the physician, APRN, or physician assistant shall prescribe:

- (a) An initial one (1) month supply of the medication; and
- (b) Up to two (2) refills of the medication.

(2) The department shall reimburse for a refill of a medication referenced in subsection (1) of this section for a recipient if the requirements established in this subsection are met.

(a) For a recipient who is not participating in a tobacco cessation program:

- 1. The department shall have received, from the provider or the recipient, a completed Tobacco Cessation Referral Form corresponding to the recipient's assessment; and
- 2. The recipient shall have contacted the department and requested the refill.

(b) For a recipient who is participating in a tobacco cessation program:

- 1. The department shall have received, from the provider or the recipient, a completed Tobacco Cessation Referral Form corresponding to the recipient's assessment; and
- 2. The recipient shall:

a. For the first refill:

- (i) Have participated in the first month of a tobacco cessation program; and
- (ii) Contacted the department to request a refill and to express the intent to continue participating in the tobacco cessation program; or

b. For the second refill:

- (i) Have participated in the second month of a tobacco cessation program; and
- (ii) Contacted the department to request a refill and to express the intent to continue participating in the tobacco cessation program.

Section 5. Tobacco Cessation Reimbursement. (1) The department shall reimburse for a tobacco cessation medication provided to a recipient if:

(a) The medication is:

- 1. Medically necessary;
- 2. Approved by the FDA for tobacco cessation;
- 3. Prescribed for the recipient in accordance with Section 4 of this administrative regulation; and

4. If subject to prior authorization, prior authorized by the department; and

(b) For a refill, the recipient has met the requirements established in Section 4(2) of this administrative regulation.

(2) The department shall reimburse for no more than two (2) simultaneous tobacco cessation medications.

(3) The department shall reimburse for a tobacco cessation medication in accordance with 907 KAR 1:018.

(4) Reimbursement for a tobacco cessation medication shall be limited to two (2) courses of treatment per recipient per calendar year.

- (5) The department shall reimburse for a tobacco cessation assessment provided by:
- (a) A physician, in accordance with 907 KAR 3:010, Section 2(2)(b);
 - (b) A physician assistant, in accordance with 907 KAR 3:010, Section 3(6) and (7)(a); or
 - (c) An APRN, in accordance with 907 KAR 1:104, Section 2(1)(b).

Section 6. Reporting Requirements. (1) A recipient shall:

(a) Upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department; or

(b) Upon the provider's request, provide information to the provider regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

(2) A provider shall, upon the department's request, provide information to the department in accordance with 907 KAR 1:672.

Section 7. Cost Sharing Exemption for Tobacco Cessation Medications. The department shall not impose cost sharing for any tobacco cessation medication prescribed for tobacco cessation purposes and referenced in this administrative regulation.

Section 8. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the provision; or
- (2) Disapproves the provision.

Section 9. Appeal. An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be conducted in accordance with 907 KAR 1:563.

Section 10. Incorporation by Reference. (1) The "Tobacco Cessation Referral Form", January 2011 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and is also available at <http://www.chfs.ky.gov/dms/incorporated.htm>. (37 Ky.R. 1364; 2023; 2183; eff. 4-1-2011; Crt eff. 12-6-2019.)